



Paper No. 6

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APR 23 2002

In re Application of
Durand and Pellegrinelli
Application No. 09/865,532
Filed: May 29, 2001
Attorney Docket No. Q64581
For: METHOD AND APPARATUS FOR BLOCKING AN
OPERATION INVOLVING TWO IDENTIFIERS

OFFICE OF PETITIONS
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: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
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This is a decision on the petition under 37 CFR 1.47(a), filed January 25, 2002.

The petition under 37 CFR 1.47(a) is **dismissed**.

Any request for reconsideration under this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Failure to respond will result in the abandonment of this application. Any response should be titled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)."

The above-identified application was filed on May 29, 2001, without an executed oath or declaration. Accordingly, a "Notice to File Missing Parts of Nonprovisional Application" was mailed on July 25, 2001, requiring an executed oath or declaration and a surcharge for the late filing of the oath or declaration.

On January 25, 2002, petitioner filed the instant petition and obtained a four (4) month extension of time to file a reply. In support of the petition, petitioner filed a declaration executed by inventor Durand and a statement offered by Michel Bruneel and Josiane Demarly concerning the facts of inventor Pellegrinelli's alleged refusal to execute the declaration.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor(s) cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee,
- (4) a statement of the last known address of the non-signing inventor,

The instant petition lacks item (1) set forth above.

As to item (1), petitioner did not sufficiently establish that a complete copy of the application papers was presented to the non-signing inventor. The statement offered by Ms. Bruneel and Ms. Demarly asserts only that the Declaration and Power of Attorney was sent to inventor Pellegrinelli, but does not indicate that inventor Pellegrinelli was given a complete copy of the application papers (specification, including claims, drawings, and oath or declaration.) The conclusion cannot be reached that inventor Pellegrinelli

has refused to join the application if it is not evident that inventor Pellegrinelli has had the opportunity to review the entire application papers.

Section 409.03(d) of the Manual of Patent Examination provides guidance on the subject and reads, in pertinent part, as follows:

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses the application papers. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney.

Petitioner must provide some proof that the complete application papers were forwarded to inventor Pellegrinelli whether such proof is a copy of a cover letter that may accompany the application papers when mailed to inventor Pellegrinelli and/or a statement attesting that the complete application papers were mailed to the last known address for inventor Pellegrinelli. Such evidence and/or statement should accompany any renewed petition filed under 37 CFR 1.47(a). **With any renewed petition filed, it is requested that petitioner provide the English translation of pertinent evidentiary documents, including the cover letter that accompanies the complete application papers or the statement attesting to the delivery of the same and any response of inventor Pellegrinelli.**

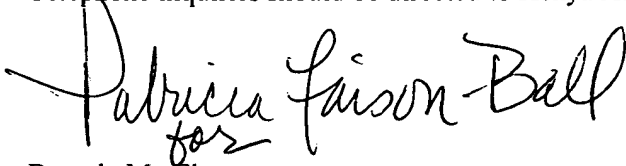
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6919
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, Virginia

Telephone inquiries should be directed to Kenya A. McLaughlin, Petitions Attorney, at (703) 305-0010.

A handwritten signature in cursive script that reads "Patricia Flanagan" with a small "for" written below the name.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy